

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/800,134

**Applicant(s)**

ALTMAN ET AL.

**Examiner**

David M. Naff

**Art Unit**

1657

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 04 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): the 35 USC 112, second paragraph, rejection.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: None.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2 and 4-31.  
Claim(s) withdrawn from consideration: 32-49.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/David M. Naff/  
Primary Examiner, Art Unit 1657

Continuation of 11, does NOT place the application in condition for allowance because: the Armato et al patent is not antedated by the 37 CFR 1.131 Declaration filed 5/4/09. Exhibits A and B do not disclose a fabric. The six cord construct containing six parallel cords in the fourth paragraph on the first page of Exhibit B is not a fabric when the term fabric is given its art recognized meaning. The paragraph bridging columns 6 and 7 of patent 6,902,932, which issued from parent application 10/008,924, discloses the same six parallel cords. However, the parent application like Exhibit B nowhere recites that the six parallel cords constitute a "fabric". The description of forming a fabric occurred for the first time in the instant application, which is a continuation-in-part (CIP) of the parent application. The description of forming a fabric in the present application does not have support in the parent application and Exhibits A and B. Exhibits A and B relate to an invention described in the parent application bridging columns 6 and 7, and not to an invention that is a fabric as described in the instant application. The amendment refers to Figure 4A of the present application as showing fabrics. While paragraph 0052 states that Fig. 4A shows images of multiple yarn and fabric forms, none of the specific images are described as a fabric. Images i-vi are described as various types of braids, image vii is described as a yarn, images viii-xi are described as twisted yarns, and image xii is described as two level cabled yarns. Braids and yarns are not fabric. There is not support in the parent application or Exhibits A and B that braids and yarns of Fig. 4A are fabric. Fig 4A is not present in the parent application. Fabric is shown by Fig. 2B and Figs. 20A-20C, which are different structures than shown by images i-xii of Fig. 4A. The amendment asserts that structures of Exhibits A and B fall within the definition of fabric occurring in the present application. However, this is a matter of individual interpretation. In any event, fabric and its definition in the present application are not mentioned in the parent application and Exhibits A and B. The concept of a fabric occurred in the instant CIP application, not in the parent application and Exhibits A and B. At the time of Exhibits A and B and filing the parent application, none of the described structures were considered to be a fabric.

The amendment urges that, as stated in a declaration of 10/29/07, Li et al refers to a non-degradable silk suture matrix surrounded by a semi-permeable membrane. However, the rejection is based on the Armato et al patent which suggests a degradable fabric. Similarly, while Takezawa et al may disclose non-degradable threads, degradable fibroin fibers are disclosed by Armato et al.

In regard to the obvious double patenting rejection, Armato et al has not been removed as a reference. The terminal disclaimer does not overcome the rejection since the attorney signing the disclaimer is not of record in the present application.